



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5564

by Rep. Carol A. Sente

SYNOPSIS AS INTRODUCED:

35 ILCS 5/909

from Ch. 120, par. 9-909

Amends the Illinois Income Tax Act. Provides that the Department of Revenue shall include on each income tax return, including any amended return and any installment of estimated taxes, a provision allowing the taxpayer to elect to apply all or a portion of the refund due to the taxpayer as a result of an overpayment made in that taxable period to the taxpayer's tax liability in any subsequent taxable period. Provides that the election shall be irrevocable.

LRB098 17917 HLH 53041 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 909 as follows:

6 (35 ILCS 5/909) (from Ch. 120, par. 9-909)

7 Sec. 909. Credits and Refunds.

8 (a) In general. In the case of any overpayment, the
9 Department, within the applicable period of limitations for a
10 claim for refund, may credit the amount of such overpayment,
11 including any interest allowed thereon, against any liability
12 in respect of the tax imposed by this Act, regardless of
13 whether other collection remedies are closed to the Department
14 on the part of the person who made the overpayment and shall
15 refund any balance to such person.

16 (a-5) Notwithstanding any other provision of law, the
17 Department shall include on each income tax return, including
18 any amended return and any installment of estimated taxes, a
19 provision allowing the taxpayer to elect to apply all or a
20 portion of the refund due to the taxpayer as a result of an
21 overpayment made in that taxable period to the taxpayer's tax
22 liability in any subsequent taxable period. Once made, the
23 election shall be irrevocable. The Department shall apply the

1 amount of the refund to the taxpayer's subsequent tax liability
2 as indicated on the return. A taxpayer that elects to apply his
3 or her refund to a subsequent taxable period shall not be
4 entitled to interest on the amounts so applied.

5 (b) Credits against estimated tax. The Department may
6 prescribe regulations providing for the crediting against the
7 estimated tax for any taxable year of the amount determined by
8 the taxpayer or the Department to be an overpayment of the tax
9 imposed by this Act for a preceding taxable year.

10 (c) Interest on overpayment. Interest shall be allowed and
11 paid at the rate and in the manner prescribed in Section 3-2 of
12 the Uniform Penalty and Interest Act upon any overpayment in
13 respect of the tax imposed by this Act. For purposes of this
14 subsection, no amount of tax, for any taxable year, shall be
15 treated as having been paid before the date on which the tax
16 return for such year was due under Section 505, without regard
17 to any extension of the time for filing such return.

18 (d) Refund claim. Every claim for refund shall be filed
19 with the Department in writing in such form as the Department
20 may by regulations prescribe, and shall state the specific
21 grounds upon which it is founded.

22 (e) Notice of denial. As soon as practicable after a claim
23 for refund is filed, the Department shall examine it and either
24 issue a notice of refund, abatement or credit to the claimant
25 or issue a notice of denial. If the Department has failed to
26 approve or deny the claim before the expiration of 6 months

1 from the date the claim was filed, the claimant may
2 nevertheless thereafter file with the Department a written
3 protest in such form as the Department may by regulation
4 prescribe, provided that, on or after July 1, 2013, protests
5 concerning matters that are subject to the jurisdiction of the
6 Illinois Independent Tax Tribunal shall be filed with the
7 Illinois Independent Tax Tribunal and not with the Department.
8 If the protest is subject to the jurisdiction of the
9 Department, the Department shall consider the claim and, if the
10 taxpayer has so requested, shall grant the taxpayer or the
11 taxpayer's authorized representative a hearing within 6 months
12 after the date such request is filed.

13 On and after July 1, 2013, if the protest would otherwise
14 be subject to the jurisdiction of the Illinois Independent Tax
15 Tribunal, the claimant may elect to treat the Department's
16 non-action as a denial of the claim by filing a petition to
17 review the Department's administrative decision with the
18 Illinois Independent Tax Tribunal, as provided by Section 910.

19 (f) Effect of denial. A denial of a claim for refund
20 becomes final 60 days after the date of issuance of the notice
21 of such denial except for such amounts denied as to which the
22 claimant has filed a protest with the Department or a petition
23 with the Illinois Independent Tax Tribunal, as provided by
24 Section 910.

25 (g) An overpayment of tax shown on the face of an unsigned
26 return shall be considered forfeited to the State if after

1 notice and demand for signature by the Department the taxpayer
2 fails to provide a signature and 3 years have passed from the
3 date the return was filed. An overpayment of tax refunded to a
4 taxpayer whose return was filed electronically shall be
5 considered an erroneous refund under Section 912 of this Act
6 if, after proper notice and demand by the Department, the
7 taxpayer fails to provide a required signature document. A
8 notice and demand for signature in the case of a return
9 reflecting an overpayment may be made by first class mail. This
10 subsection (g) shall apply to all returns filed pursuant to
11 this Act since 1969.

12 (h) This amendatory Act of 1983 applies to returns and
13 claims for refunds filed with the Department on and after July
14 1, 1983.

15 (Source: P.A. 97-507, eff. 8-23-11; 97-1129, eff. 8-28-12;
16 98-463, eff. 8-16-13.)